IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.652 OF 2007
IN
NOTICE OF MOTION NO.158 OF 2007
IN
B.C.C.C.S.C. SUIT NO.5425 OF 2006

1. Kantilal Karunashankar Bhatt
2. Nayan Kantilal Bhatt
3. Alpesh Kantilal Bhatt .. Appellants
(Orig.Defendants)

Versus

Kunal V. Chotalia .. Respondent
(Orig.Plaintiff)

Mr. Girishkumar V. Pandya Advocate for the Appellants
Mr. Rajesh Jain Advocate for the Respondent

CORAM : S.R. SATHE,J.
DATED : 31/08/2007

ORAL ORDER :-

1. By consent appeal is heard finally at admission stage.

2. Appellants-original defendants in Short Cause Suit No.5425 of 2006 have preferred this appeal against the order passed by the Judge, City Civil Court, Mumbai in Notice of Motion No. 158 of 2007 filed in the above mentioned suit whereby the Notice of Motion was made absolute in terms of prayer clause (a) and the defendants were directed to vacate the suit premises

and remove all their belongings and restore the possession of the suit premises to the Plaintiff. For the sake of convenience hereafter the parties shall be referred to as 'Plaintiff' and 'defendants'.

3. The brief facts giving rise to this appeal are as under:-

The suit property i.e. room No.10 situated in Govind Mistry Chawl, Borivali, Mumbai is owned by Plaintiff. The said room was let out by Plaintiff to one Jayantilal Karunashankar Bhatt, brother of defendant No.1. The defendant Nos.2 and 3 are sons of defendant No.1. The Plaintiff filed RAD Suit No.341 of 1995 against Jayantilal, brother of defendant No.1 for possession of the suit room in the Court of Small Causes, Bandra. The said suit was opposed by Jayantilal. However, the said suit was decreed on merits on 17/11/2005. Thereafter, the Plaintiff filed an execution proceedings against the said Jayantilal and warrant for possession of the suit room was issued. When Ballief went to take possession of the said room, the defendants obstructed. Plaintiff, therefore, filed an application before the executing court and

ultimately the executing court issued the possession warrant and directed that in case of need, police aid be taken. Accordingly, the warrant of possession was executed on 20/04/2006 and Plaintiff received peaceful vacant possession of the suit premises.

4. Even after the time Plaintiff received possession, the defendants started applying pressure tactics on Plaintiff and harassing him. Defendants with the help of others also used criminal force against the Plaintiff. Plaintiff, therefore, filed complaint with Police.

5. On 15/07/2006, at about 8.30 pm, the Plaintiff found that the lock of the suit room was broke open and there was light in the room. Plaintiff, therefore, peeped in the suit premises and he found that the defendants were inside the suit room with some household articles. Naturally, Plaintiff made inquiry with them and on that defendants told Plaintiff that they entered the premises and for that there was no necessity for obtaining permission from any one. Plaintiff, therefore, went to Kasturba Road Police

Station and filed complaint which was registered at No.183 of 2006 dated 16/07/2006. Not only that but in pursuance of the said complaint, defendants and some other persons named in the complaint were also arrested.

6. As the defendants unauthorizedly, unlawfully dispossessed the Plaintiff from suit room, Plaintiff filed present suit under section-6 of the Specific Relief Act and prayed that the possession of the suit premises be restored to him. He also filed Notice of Motion No.158 of 2007 and made similar request and prayed that defendants be directed to vacate the suit premises and remove their belongings.

7. The defendants filed their Written Statement and opposed the suit claim as well as the Notice of Motion. Firstly, they contended that they have in fact filed suit bearing No.RAD-509 of 2006 against the present Plaintiff in Small Causes Court, Bandra for permanent injunction and as the subject matter of the present suit and suit No.509 of 2006 is the same, the present suit is not maintainable and has to be stayed

as per the provisions of Section-10 of the Code of Civil Procedure. Secondly, they contended that the suit room was taken on lease by defendant No.1, his brother Jayantilal and their mother Shantaben for their family. The rent receipt was, however, issued in the name of Shantiben and after her death, it was transferred in the name of Jayantilal, he being elder male member in the family. Thus, according to defendants, they were also having tenancy rights in the suit property. Not only that but they also contended that when Plaintiff had filed suit No.RAD No.341 of 1995 in the Small Causes Court, Bandra for possession, defendant No.1 had moved an application and prayed that defendant No.1 be joined as party. However, the said application was rejected. The defendant No.1 further contended that his brother Jayantilal joined hands with Plaintiff as Jayantilal was no more in the need of suit premises and had shifted to other premises and handed over the possession of the suit room in collusion with Plaintiff to him. The defendant, further contended that they had in fact objected for the execution of the decree passed in RAD No.341 of 1995. However, on 20/04/2006, the Plaintiff took keys of the suit room from the neighbour

of defendant No.1 namely Mahendra Rathore with whom the defendant No.1 had kept the keys of the suit room while they had gone to their relative's house. According to defendants, after few days when they found different lock on the suit premises, they were shocked and they, therefore, removed the said lock and entered the suit premises and thereafter, filed RAD Suit No.509 of 2006 in the Court of Small Causes, Bandra and asked for the injunction restraining the Plaintiff from dispossessing the defendants. In that suit, the Plaintiff appeared and opposed the suit and submitted an application for appointment of receiver for the suit room. The defendants, therefore, contended that Plaintiff is not entitled to get any temporary injunction as prayed.

8. After hearing the arguments of both the learned Advocates, learned Trial Judge came to the conclusion that Plaintiff was put in possession of the suit room after executing decree for possession and the defendants unlawfully dispossessed Plaintiff. He, therefore, found that it was a fit case for granting temporary relief as prayed. He, therefore, directed the defendants to remove themselves and their belongings

from the suit room and restore the possession of the suit room to Plaintiff.

9. Being aggrieved by the above mentioned order, defendants have filed the present appeal. In this appeal before me, Shri Pandya, learned Advocate for the defendants has urged two points. Firstly, he submitted that as the defendant had filed RAD No.509 of 2006 in respect of the suit room in the Court of Small Causes, Bandra, Plaintiff was in fact not entitled to file the present suit in the City Civil Court, Mumbai and as subject matter of both the suit was the same, it was necessary for the City Civil Court to stay the subsequent suit of Plaintiff as per Section-10 of the Civil Procedure Code. Secondly, he canvassed before me that the interim relief granted in favour of Plaintiff has in fact amounted to disposal of the entire suit. He, therefore, submitted that the appeal be allowed and the order passed by the learned Trial Judge be set aside. As against this, Shri Rajesh Jain, learned Advocate for the Respondent supported the order passed by the learned Trial Judge. He submitted that there are clear-cut admissions of the defendants wherein they

have admitted that Plaintiff was put in possession in execution proceedings and they removed the lock and entered the suit premises. Secondly, he canvassed before me that as interim relief is granted in Suit under section 6 of the Specific Relief Act, the appeal against such order is not maintainable under Order-43, Rule-1 of CPC. He, therefore, submitted that the appeal be dismissed.

10. It is not in dispute that Plaintiff had filed RAD Suit No.341 of 1995 against Jayantilal Bhatt, brother of defendant No.1 for the possession of the suit room and the said suit was decreed in Plaintiff's favour on 17/11/2005. Admittedly, Plaintiff filed the execution proceedings and possession warrant was issued against Jayantilal. When Ballief had gone to take the possession of the suit room on 17/04/2006, the present Plaintiff moved to the executing Court and requested for Police help. The same was granted by the Court on 19/04/2006 and ultimately, on 20/04/2006, the Plaintiff received the vacant possession of the suit room. Plaintiff had received the possession of the suit room accordingly is in fact not disputed. It is tried to be

contended on behalf of the defendants that when they had gone to their relative they had kept one key of the suit room with their neighbour Mahendra. According to defendants, Plaintiff obtained possession by obtaining the said key from Mahendra. A feeble attempt has been made to show that the possession was not obtained by following due procedure. However, admittedly, the possession of the suit premises is taken in execution proceedings and the ballief had handed over the same to Plaintiff. Merely because there is no reference in the panchanama regarding the articles which were found there one can not jump to the conclusion at this stage that proper procedure was not followed. On the contrary, it corroborates the Plaintiff's version that the defendants took away their articles. So, prima facie Plaintiff has certainly shown that on 20/04/2006 he had received possession of the suit property and he had locked the same. It is pertinent to note that even the defendant had clearly admitted in their Written Statement para-3(o) that after few days when they visited the suit room, they found that it was locked and they, therefore, removed the said lock and entered the room. We can not ignore the fact that even

according to defendant, they were fully aware that the decree for possession of the suit room was passed in favour of Plaintiff and the Plaintiff was executing the said decree through ballief. So, when they were having such knowledge it was not at all expected of defendants to take the law in their hands and break open first lock of the suit room and enter in the suit room. This action of defendants was highly objectionable. It clearly shows that the defendants unauthorizedly, unlawfully dispossessed the Plaintiff from the suit room. Incidently, it must be noted that Plaintiff has even filed Criminal case immediately against the defendants and offence has been registered and the defendants were also arrested. So one thing is certain that the Plaintiff has prima facie shown that he was put in possession of the suit room but the defendants unlawfully dispossessed him and that is why Plaintiff filed the suit within 6 months from the dispossession in the City Civil Court, Mumbai and also prayed for the interim relief.

11. Much is made about the fact that defendants had filed RAD Suit No.509 of 2006 in the Court of Small

Causes, Bandra. However, it is very clear that in that suit the defendant had prayed that they should not be dispossessed without following due process of law. However, it is clear that the defendants did not disclose all the material facts in the said suit. The present suit is specifically filed under section-6 of the Specific Relief Act. The subject matter of this suit is only the defendants unlawfully dispossessing Plaintiff within a period of 6 months immediately preceding the filing of the present suit. It is needless to say that this suit could not have been filed in the Small Causes Court, Mumbai. The essential ingredients of Section-10 are not fulfilled in the instant case. So, under such circumstances, there is no substance in the argument that it was necessary for the trial Court to stay the present suit as per Section-10 of the Civil Procedure Code.

12. Incidently, it must also be noted that in the present suit, the Plaintiff had not at all concealed the fact that the defendant has filed suit No.509 of 2006 in the Small Causes Court, Mumbai. Admittedly, though the said suit was filed, no any interim relief

was granted against the present Plaintiff, as a result of which, it can be said that Plaintiff was precluded or restrained from filing the present suit.

13. It is well settled that the Court has ample power under section-6 of the Specific Relief Act to grant interim relief by directing to restore the possession which existed immediately before filing of the suit i.e. before the alleged act of removal by unlawful means. It is needless to say that such power has to be exercised by the Court with great care and caution and only in a rear and exceptional case. However, when it is apparent from the face of record that the defendants acted highhandedly and by taking law in their hands they broke open the Plaintiff's lock and entered the suit room, such highhanded things can not be tolerated. If interim relief as prayed by the Plaintiff in Notice of Motion is not granted having resort to Order-39, Rule-1 of CPC then, it would in fact amount to allowing the defendants to remain in unlawful possession and perpetuate the illegality till the disposal of the suit. So, even if at present the Court has directed the defendants to remove themselves

from the suit room alongwith their belongings and restore the possession of the suit room to Plaintiff i.e. ultimately, the direction which has to be followed till the decision of the suit. So, ultimately, if Plaintiff fails to prove the case then certainly, possession of the suit room will be restored to the defendants. So, having regard to all these facts and circumstances, it has to be said that the peculiar circumstances of this case warranted grant of temporary relief as prayed by the Plaintiff. I am, therefore, of the considered view that the order passed by the learned Trial Judge is legal and correct. There is no need to interfere with the same. Hence, I pass the following order :-

O R D E R

The appeal is dismissed with costs.

(S.R.SATHE,J.)